SPEECH

OF

HON. L. W. POWELL,

OF KENTUCKY,

ON THE BILL

TO CONFISCATE THE PROPERTY

AND

FREE THE SLAVES OF REBELS.

DELIVERED

IN THE SENATE OF THE UNITED STATES,

APRIL 16, 1862.

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The Senate having under consideration the bill (S. No. 151) to confiscate the property and free the slaves of rebels, Mr. POWELL said:

Mr. PRESIDENT: It is seldom that any deliberative body has been called upon to consider a bill of such vast importance as the one now before us. The Senate of the United States has rarely, if ever, had under consideration a subject of such vast and overwhelming magnitude. This Government is one of limited powers. All the power that can be legitimately exercised by any or all of its departments is derived from the Constitution. Whenever the legislative, the executive, or the judicial department claim the right to exercise power and it is challenged, they must show their constitutional warrant; they must show the grant of power either in express words or by necessary implication. The tenth article of the amendments to the Constitution declares that

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

I might rest the argument here, being confident that those who advocate the passage of this bill can point to no clause in the Constitution that will authorize its passage. I will proceed, however, to a brief examination of the bill and state to the Senate some of the reasons why, in my judgment, it should not pass. I will also cite the provisions of the Constitution that will be violated by its passage. The Constitution defines treason, and then gives to Congress the power to declare the punishment of treason; and an act of Congress in 1790 declared the punishment of treason to be death. I will read the clauses in the Constitution concerning treason:

"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or in confession in open court."

"The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted."

Under that clause of the Constitution, I hold that there can be no attainder or forfeiture of estate in consequence of treason except by judicial attainder, and then only for the life of the offender; for the Constitution declares that "no bill of attainder or *ex post facto* law shall be passed." The full and entire extent to which Congress can go, in the punishment of treason, so far as forfeiture of estate is concerned, is, after judicial attainder, to forfeit or confiscate it during the lifetime of the individual convicted; and it is only for treason and

its cognate offenses that that forfeiture, in my judgment, can take place under the Constitution.

There is another clause of the Constitution to which I will call the attention of the Senate, and that is the fifth amendment:

"No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger; nor shall any person be subject, for the same offense, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

Those clauses when taken together, in my judgment, present an insurmountable barrier to the passage of the first section of this bill. In order that I may present the bill fairly, I will read that section. It is in these words:

"That the property, real and personal, of every kind whatsoever, both corporeal and incorporeal, and including choses in action, and wheresoever situated, within the limits of the United States, belonging to any person or persons beyond the jurisdiction of the same, or to any person or persons in any State or district within the United States, now in a state of insurrection and rebellion against the authority thereof, so that in either case the ordinary process of law cannot be served upon them, who shall during the present rebellion be found in arms against the United States, or giving aid and comfort to said rebellion, shall be forfeited and confiscated to the United States; and as to all property which shall be seized and appropriated as hereinafter provided, such forfeiture shall take immediate effect upon the commission of the act of forfeiture, and all right, title, and claim of the person committing such act, together with the right or power to dispose of or alienate his property of any and every description, shall instantly cease and determine, and the same shall at once vest in the United States."

It is manifest from this section of the bill that the estates of persons engaged in this war in opposition to the Government, who are either in arms or aiding and assisting it, are forfeited by legislative enactment without the instrumentality or the aid of judicial process. That is evidently contrary to the provisions of the Constitution that I have read. I am fully aware that the honorable Chairman of the Judiciary Committee and the distinguished Senator from New York, [Mr. HARRIS,] also a member of that committee, have declared to the Senate that this is not a bill of attainder. They both admit that wherever a party is convicted of treason you cannot forfeit his estate for a longer period than his life; but they attempt to avoid the application of the clause of the Constitution which says no bill of attainder shall be passed, to this section, on the ground that a bill of attainder must necessarily be *ex post facto* in its nature, and that this section applies only to those who shall commit this offense in the future. With great deference to those distinguished gentlemen, I humbly submit to the Senate whether the Constitution of the United States can be circumvented in that manner.

In order to give a just, full, and fair interpretation of the Constitution or of a statute, you must take into consideration the circumstances surrounding those who made it, the evils to be corrected, and the rights and privileges to be secured. Let us examine this clause of the Constitution in that light, and see whether or not it was not the intention of the framers of our Constitution to prevent our people from being visited by those harsh penalties that accompanied treason in England, the laws of which were extended to this country. I will read a few extracts from Judge Story on the Constitution that show very clearly, and in language more pointed and more forcible than any I could use, the reason why our fathers inserted those clauses in the Constitution. Commenting on the first section of the Constitution that I have just read concerning the punishment of treason, Judge Story says:

"It is well known that corruption of blood and forfeiture of the estate of the offender followed, as a necessary consequence, at the common law, upon every attainder of treason. By corruption of blood all inheritable qualities are destroyed; so that an attainted person can neither inherit lands nor other hereditaments from his ancestors, nor retain those he is already in possession of, nor transmit them to any heir. And this destruction of all inheritable qualities is so complete that it obstructs all descents to his posterity whenever they are obliged to derive a title through him to any estate of a remoter ancestor. So that if a father commits treason, and is attainted, and suffers death, and then the grandfather dies, his grandson cannot inherit any estate from his grandfather; for he must claim through his father, who could convey to him no inheritable blood. Thus the innocent are made the victims of a guilt in which they did not, and perhaps could not participate, and the sin is visited upon remote generations. In addition to this

most grievous disability, the person attainted forfeits, by the common law, all his lands and tenements, and rights of entry, and rights of profits in lands or tenements which he possesses. And this forfeiture relates back to the time of the treason committed, so as to avoid all intermediate sales and incumbrances; and he also forfeits all his goods and chattels from the time of his conviction."—*Story on the Constitution*, vol. 2, sec. 1298, pp. 178, 179.

It was to relieve our people forever from the harsh features of the English law cited by Judge Story that caused our wise ancestors to put in our Constitution the clauses that I have quoted. I will read another extract from the same authority. In commenting upon the clause of the Constitution which says, "no bill of attainder or *ex post facto* law shall be passed," Judge Story says:

"Bills of Attainder, as they are technically called, are such special acts of the Legislature as inflict capital punishments upon persons supposed to be guilty of high offences, such as treason and felony, without any conviction in the ordinary course of judicial proceedings. If an act inflicts a milder degree of punishment than death, it is called a bill of pains and penalties. But in the sense of the Constitution, it seems that bills of attainder include bills of pains and penalties; for the Supreme Court have said, 'a bill of attainder may affect the life of an individual, or may confiscate his property, or both.'"

That was decided in the case of Fletcher *vs.* Peck, reported in 6 Cranch—

"In such cases the legislature assumes judicial magistracy, pronouncing upon the guilt of the party without any of the common forms and guards of trial, and satisfying itself with proofs, when such proofs are within its reach, whether they are conformable to the rules of evidence or not. In short, in all such cases the legislature exercises the highest power of sovereignty, and what may be properly deemed an irresponsible despotic discretion, being governed solely by what it deems political necessity or expediency, and too often under the influence of unreasonable fears or unfounded suspicions. Such acts have been often resorted to in foreign Governments as a common engine of State; and even in England they have been pushed to the most extravagant extent in bad times, reaching as well to the absent and the dead as to the living. Sir Edward Coke has mentioned it to be among the transcendent powers of Parliament, that an act may be passed to attaint a man after he is dead. And the reigning monarch, who was slain at Bosworth, is said to have been attainted by an act of Parliament a few months after his death, notwithstanding the absurdity of deeming him at once in possession of the throne and a traitor. The punishment has often been inflicted without calling upon the party accused to answer, or without even the formality of proof; and sometimes, because the law, in its ordinary course of proceedings, would acquit the offender. The injustice and iniquity of such acts, in general, constitute an irresistible argument against the existence of the power. In a free government it would be intolerable; and in the hands of a reigning faction it might be, and probably would be, abused to the ruin and death of the most virtuous citizens. Bills of this sort have been most usually passed in England in times of rebellion or of gross subserviency to the crown, or of violent political excitement, periods in which all nations are most liable—as well the free as the enslaved—to forget their duties and to trample upon the rights and liberties of others."—*Story on the Constitution*, vol. 2, sec. 1344, pp. 238, 240.

I have read at length these two sections from Judge Story, pointing out the reasons why it was that our fathers placed in the Constitution the clauses that I have read. I have stated distinctly to the Senate that, in my judgment, there could be no confiscation for treason, except after judicial attainder and finding by the courts, and then only for life. This bill forfeits and confiscates the property of these parties for the crime of treason by legislative enactment, and consequently it is nothing less than a bill of attainder. It is clearly so. The great objection to bills of attainder was, not so much that they were *ex post facto* in their nature, but because they deprived the citizen of his property without judicial process, which is secured to him by the Constitution. If the two Senators to whom I have referred are correct, that this bill is not technically a bill of attainder, certainly in all its moral and legal effects it is a bill of attainder; but I believe, when strictly construed, it is a bill of attainder. The chief and most obnoxious feature of a bill of attainder is, that you deprive the citizen of his life, his liberty, or his property by legislative enactment, without judicial process, without trial by a jury of his peers. It is to that that Judge Story points as one reason why that kind of proceeding was so obnoxious to law, to reason, to justice, and to right. I would ask the gentlemen who contend that this section of the bill is constitutional, what disposition they will make of the clause of the Constitution which I have read, which declares that no man shall be deprived of his life, liberty, or property without process of law? This bill certainly violates that provision of the Constitution. What do you mean, sir, by process of law? We are not left in the dark as to what is meant by it. That clause of the Constitution is substantially a clause of Magna Charta. I will read what Mr. Story says upon that subject:

"The other part of the clause is but an enlargement of the language of Magna Charta, '*nec super eum ibimus, nec super eum mittimus, nisi per legale judicium parium suorum, vel per legem terræ,*' neither will we pass upon him or condemn him, but by the lawful judgment of his peers, or by the law of the land. Lord Coke says that these latter words, *per legem terræ*, (by the law of the land,) mean by due process of law; that is, without due presentment or indictment, and being brought in to answer thereto by due process of the common law. So that this clause in effect affirms the right of trial according to the process and proceedings of the common law."

I put it to my worthy friend from New York, whom I know to be an able lawyer, how he can, by any process of logic, put this bill in any attitude that is not obnoxious to that provision of the Constitution? Do you not, by the section of the bill that I have read, deprive the citizen of his property without process of law? Do you give him a trial in any court? None, sir, none; but you take away his property by legislative enactment. Fortunately, we are not left entirely without judicial decision on this point, I am aware that Senators make an effort to evade the force of the constitutional objections I am now making, and which were so ably urged by the Senator from Pennsylvania, (Mr. COWAN,) the Senator from Illinois, (Mr. BROWNING,) the Senator from California, (Mr. MCDOUGALL,) and the Senator from Virginia, (Mr. CARLILE,) and others, by asserting that this is not a punishment for treason. That was particularly asserted by the chairman of the Committee on the Judiciary. Sir, I ask if you can avoid the plain, distinct provisions of the Constitution by that kind of circumvention? What is the language of the bill itself? It is, that the estates of persons

"Found in arms against the United States, or giving aid and comfort to said rebellion, shall be forfeited and confiscated to the United States."

The very language of your bill is the offence of treason as defined by the Constitution; and yet you say because the party is not convicted of treason, you will forfeit his estate, which the constitution says shall not be forfeited without process of law; you will spare the party the trial and sentence of a court by a kind of artful dodge, for the purpose of circumventing the plain provisions of the Constitution and forfeiting his estate. In my judgment, such dodging cannot circumvent and virtually annul the clear provisions of the Constitution. You cannot treat them as citizens in arms against their Government, and at the same time apply to them the law which governs alien enemies, whilst you recognize them as citizens. You cannot rightfully withhold from them the guarantees of the Constitution.

I have a decision reported in the first volume of Dana's Kentucky Reports that I think is very much in point upon this very question as to whether this is a bill of attainder. Certainly each and every Senator must admit that in all of its moral and legal consequences it is a bill of attainder, if not technically so; but I believe, as I have said, that it is technically a bill of attainder, because you deprive the person of his estate by legislative enactment without judicial process. In 1824, the Legislature of Kentucky passed a law requiring the non-resident owners of lands in that State to make certain improvements upon them, and in the event that they did not make the improvements prescribed in the statute, their lands were forfeited and subject to entry under our land laws. Many persons did not make the improvements; others entered upon the lands; and the question came up directly under that statute as to whether it was constitutional or not. The case was elaborately argued, and decided by two of the judges of our Supreme Court. The opinions were concurrent. Such was the magnitude and importance of the case that two judges, which is not common with us, delivered opinions. One of them was Judge Underwood, long an honored member of this body, and the other was Judge Nicholas, one of the most eminent jurists in that or any other State. They decided that the law was in contravention of the provisions of the Constitution; that it was not only in its moral and legal effects, but in reality, a bill of attainder. Judge Underwood makes a very elaborate and able opinion. He

alludes to the clauses of the Constitution which I have read rather incidentally; but Judge Nicholas quotes the Constitution and decides it most directly. I will read one or two paragraphs from his opinion. It is the case of Gaines, *et al. vs.* Buford, reported in 1 Dana's Kentucky Reports. He says:

"The powers of government are divided into three distinct departments, and confided to separate bodies of magistracy; those which are legislative to one, those which are executive to another, and those which are judiciary to a third, with a declaration that no person or persons being of one of those departments shall exercise any power properly belonging to either of the others. It is of the last importance to the purity of our institutions that this division of powers should be preserved, and this barrier against the encroachment of one department upon another should be properly kept up."

I think Senators would do well to bear in mind this lucid exposition of our system of Government and its division into various departments, and that our liberties alone consist in allowing no one department to encroach upon the other, but to keep each in its own sphere. Whenever you consolidate them your liberties are overthrown. Further on, Judge Nicholas says:

"The prohibition of the Federal Constitution against the passage of bills of attainder is also deemed to have an important bearing on this question.

"*Bills of attainder* are said by Woodeson, in his lectures, to be acts of the supreme power, pronouncing capital sentences where the legislature assume judicial magistracy; and *bills of pains and penalties* these which inflict milder punishments. But it is believed that *bill of attainder* is a generic term, comprehending both descriptions of acts. Such, at least, is believed to be its true signification, as used in our constitutions. Thus, it is said by the Supreme Court, in Fletcher *vs.* Peck, 6 Cranch, 138, 'a bill of attainder may affect the life of an individual, or may confiscate his property, or both.' So, also, it is said by Judge Tucker, in his edition of Blackstone, volume one, page 292: 'Bills of attainder are legislative acts, passed for the special purpose of attainting particular individuals of treason, or felony, or inflicting pains and penalties beyond or contrary to the common law.' That the term should be received in the large sense thus given to it, is consonant with the true republican character of our institutions. A condemnatory act of the legislature inflicting upon an individual, or class of individuals, pains and penalties, is as much within the reason of the prohibition as if it inflicted capital punishment. They are both equally hostile to the principles of civil liberty and the spirit of our written constitutions. They are equally engines of tyranny and oppression, and equally unsuitted to the government of a free people.

"Understanding, then, the term bill of attainder as embracing bills of pains and penalties, the act in question would seem to fall under this inhibition."

What was the act of the Kentucky Legislature? It was that non-residents owning real estate in the State should make certain improvements, and if they omitted to do it the property was forfeited. Judge Nicholas tells us that that was in violation of the clause of the Constitution that I have just read. What do you propose here? You say if a certain class of persons do certain things which you set forth in your bill, to wit, commit treason, then they shall be subject to forfeiture of their estates. In the one case it is a sin of omission, and in the other a sin of commission. That is the only difference between the two bills, and both are equally obnoxious to the constitutional objections that I have stated. He goes on further:

"That is a highly penal law, inflicting a most grievous penalty for the omission of the thing commanded to be done, is beyond dispute. But it is not the weight of the penalty, nor the character of the offence, that makes it a bill of attainder. But it is the confiscation of the property of individuals which attempts to make, before any condemnation, for the offence designated, either *in personam* or *in rem*. When the State rightfully requires the property of a citizen by forfeiture, it is, as the punishment annexed, by law to some illegal act or negligence of its owner. That the legislature may make the act or omission illegal, and prescribe forfeiture as the penalty, is admitted. But it is denied that it can of itself inflict the punishment. So far as the act in question undertakes to divest the title out of Gaines, and vest it in the State, it is a legislative infliction of the penalty; it is an assumption, to that extent, of judicial magistracy, without affording the accused the benefit of those forms and guards of trial which are his constitutional right, whenever he is sought to be punished, either in his person or by forfeiture of his property, for alleged violations of the penal enactments of the State."

That, sir, is what condemns this section as unconstitutional, because if this bill should become a law, you deprive, as far as you can do it by legislative enactment, the citizen of his property without allowing him the benefit of trial by process of law. The judge continues:

"The right to forfeit is an incident merely to the power to punish guilt. Without the guilt, the forfeiture cannot be incurred. The guilt cannot be ascertained by the legislature, nor otherwise than by a direct criminal procedure of some sort, and a judicial determination thereon."

Do you give these parties any judicial determination? No, sir; you by your legislative decree at one stroke of the pen deprive perhaps six millions of people of all their estates, real and personal, without any judicial process whatever, without trial by any court or any judicial tribunal. He continues:

"Bills of attainder have generally designated their victims by name; but they may do it also by classes, or by general description fitting a multitude of persons. Either mode is equally liable to moral and constitutional censure."

Here you do it by classes. You designate a class of persons any of whom or all of whom who commit the acts prescribed by your law, which is really a technical definition of treason, you say their entire estate, real and personal, shall be forfeited.

"They have generally been applied to punish offences already committed; but they have been and may be applied to the punishment of those thereafter to be committed, or for criminal omissions thereafter incurring. A bill of attainder is not necessarily an *ex post facto* law. A British act of Parliament might declare that, if certain individuals, or a class of individuals, failed to do a given act by a named day, they should be deemed to be and treated as convicted felons or traitors. Such an act comes precisely within the definition of a bill of attainder, and the English courts would enforce it without indictment or trial by jury; the prisoner, when brought to the bar, being merely asked what he had to allege, why execution should not be awarded against him."

It is clear, then, Senators, not only from the Constitution itself and the reasons that I have suggested, but from this most elaborate decision of one of the ablest judges that has ever graced the bench in any State in the American Union, that this is a bill of attainder, and it certainly violates the three provisions of the Constitution to which I have referred.

Apart from the unconstitutionality of the bill, it would be unwise and inexpedient; it would be harsh; it would be in conflict with all the rules of civilized and modern warfare. Chancellor Kent says:

"The general usage of war is not to touch private property upon land, without making compensation, unless in special cases, dictated by the necessary operations of war; or when captured in places carried by storm, and which have repelled all the overtures of capitulation."—1 *Kent's Commentaries*, p. 92.

And according to Vatel:

"For the same reasons which render the observance of those maxims a matter of obligation between State and State, it becomes equally and even more necessary in the unhappy circumstance of two innocent parties lacerating their common country."—*Vattel*, 425, chap. 28.

By the passage of this bill you not only overthrow the Constitution of your country, but you do what has not been done in any civilized nation in Christendom for the last seven centuries. The last act of this kind, so far as I am advised, that was ever resorted to by a Christian nation was in England, when William of Normandy overthrew Harold at Hastings.

Mr. TRUMBULL. I should like to ask the Senator from Kentucky this question: if he does not know that every one of the colonies—Maryland, Virginia, Pennsylvania, and all the rest—forfeited the property of the Tories in the Revolutionary war.

Mr. POWELL. I will answer the Senator with a great deal of pleasure. I am not aware that every one of the colonies did it. I know that many of them did; and I know that Judge Story and other writers in this country say that that was one of the reasons why our fathers put it in the Constitution, that we should not do it.

Mr. TRUMBULL. I should like to ask the Senator another question: whether that was not since seven centuries ago?

Mr. POWELL. Well, that may be. We were rather in embryo then; we were struggling for existence; we were not regarded by European Powers as a separate, and independent nation, but as a people in revolt against a parent Government, a people struggling for independence and nationality. I made my statement on the authority of Mr. Wheaton. I am very glad, however, the Senator suggested that, for I wish the Senate to look into the authorities. The writers on our Constitution cite those very things as one of the reasons why these clauses were inserted by our fathers in the Constitution. Mr. Wheaton, in making the statement, I suppose, did not regard the colonies as a separate nationality, but merely as a people struggling for liberty. Speaking of the subject of property obtained by conquest, Mr. Wheaton says:

"Such was the Roman law of war, often asserted with unrelenting severity; and such was the fate of the Roman provinces subdued by the northern barbarians, on the decline and fall of the western empire. A large portion, from one third to two thirds, of the lands belonging to the vanquished provincials, was confiscated and partitioned among their conquerors. The last example in Europe of such a conquest was that of England, by William of Normandy. Since that period, among the civilization of Christendom, conquest, even when confirmed by a treaty of peace, has been followed by no general or partial transmutation of landed property. The property belonging to the Government of the vanquished nation passes to the victorious State, which also takes the place of the former sovereign, in respect to the eminent domain. In other respects, private rights are unaffected by conquest."—*Wheaton's Elements of International law*, p. 420.

That is what Mr. Wheaton says on the subject, and he is usually exceedingly accurate; and you propose to do what this most eminent of international law writers—certainly the most eminent of this country—says has not been done for seven centuries. Let me tell you, Senators, if you pass this bill, you cannot execute it except to a very limited extent, and so far as you did execute it, it would result in a swindle to the ignorant purchasers confiding in Congress, for the courts would decide that you could only forfeit the property during the life of the offender. The result would be that the ignorant purchasers buying this property, confiding in the title obtained in consequence of this law, would all be cheated and swindled; for whenever the courts were open, whenever a fair hearing in any impartial and enlightened court in Christendom could be had, I have no doubt such titles would be held to be invalid.

As I have said, if you attempt to take the property of those engaged in this war against the Government, you can do it only for life, and then only by process of law. For these reasons I have stated, I believe, if you pass this bill, that it will be clearly unconstitutional, and that no good, but great harm will result from it. You would confer defective titles, and involve the purchasers in law suits; and so far from having the effect you suppose it would have, to weaken those in arms against the Government, in my judgment, you would nerve their arms; indeed you would put arms in the hands of tens of thousands that are now taking no part in this strife. You would fire them with a desperate zeal. They would have no motive to lay down their arms, when they knew that all their property would be forfeited, and they themselves sent as beggars through the earth.

Another objection to the bill is, that it punishes alike the innocent and the guilty. You strip the women, you strip the infant children, you strip decrepit age of that support to which they are entitled as the result of their savings from the labor for years of their families. It is harsh; it is cruel; it is unbecoming the age in which we live; and in my judgment unbecoming the American people. In a time like this, we should attempt by measures just and constitutional, to show those in arms against the Government, that we are not actuated by hatred to them or their domestic institutions—that our only object is to reconstruct the constitutional Union. Intolerance and vindictiveness never saved a Government, and will not save this. I now come to the second section of this bill; and in order that I may present it fairly before the Senate, I will read it:

SEC. 2. *And be it further enacted*, That every person having claim to the service or labor of any other person in any State under the laws thereof, who during the present rebellion shall take up arms against the United States, or in any manner give aid and comfort to said rebellion, shall thereby forthwith forfeit all claim to such service or labor, and the persons from whom it is claimed to be due, commonly called slaves, shall, *ipso facto*, on the commission of the act of forfeiture by the party having claim to the service or labor as aforesaid, be discharged therefrom, and become forever thereafter free persons, any law of any State or of the United States to the contrary notwithstanding. And whenever any person claiming to be entitled to the service or labor of any other person shall seek to enforce such claim, he shall, in the first instance and before proceeding with the trial of his claim, satisfactorily prove that he is and has been, during the existing rebellion, loyal to the Government of the United States; and no person engaged in the military or naval service of the United States, shall, under any pretense whatever, assume to decide on the validity of the claim of any person to the service or labor of any other person, or to surrender up any such person to the claimant.

There is certainly no power delegated to Congress to pass the section of the bill just read. All political organizations in this country have held that Congress had no power to interfere with the local institutions of the States. Con-

gress, on the 23d of March, 1790, passed a resolution declaring that they "had no authority to interfere for the emancipation of slaves within any of the States, it remaining for the several States alone to provide any regulation therein which humanity and true policy may require." On the 11th of February, 1861, Congress, by an overwhelming majority, passed a resolution "that neither Congress nor any of the non-slaveholding States had any right to interfere with slavery in any of the slaveholding States of the Union."

This is certainly in contravention of those resolutions, for you are interfering with the institution of slavery in the States. I am old-fashioned enough in my politics to believe that there is something of State rights left. Indeed, I have ever been a State-rights man, and now am a State-rights Democrat, and believe that if this country is rescued from the perils by which it is surrounded, it will ultimately be done by carrying out the constitutional principles of that glorious old party, which has successfully administered this Government for over fifty years. All parties, every political organization in this country, have admitted that the control of this domestic institution of slavery is a matter that is reserved to the States. There is not and has not been, any class of politicians in the country that ever held otherwise, except a few who claim to be higher-law men. There is no reasoning with one of these higher law men. I have no more respect for a politician who claims that he is governed by a law higher and above the Constitution which he swears to support than I have for a man who claims to be a Christian while he repudiates the Bible, and says there is a code beyond and above it by which his Christian life is governed. I look upon them as crazy, mischievous madmen, one in the political field and the other in religious affairs. They are the only class of people that ever did claim this power. The Democratic party never claimed it; the Whig party never claimed it; the Republican party never claimed it; the Chicago platform expressly repudiates it; and it is only this class of individuals to whom I have alluded that ever did claim it, so far as I am advised.

This section of the bill is an insidious attempt to do indirectly what its advocates will not attempt to do directly. It is an attempt to destroy the institution of slavery in the southern States. You will not attempt to do it directly; but in my judgment this is a most insidious attempt to do it indirectly. It violates the clauses of the Constitution to which I have referred. It is a bill of attainder accompanied with forfeiture without judicial process. By it you take private property without process of law. You take it without compensation, not for the public use, but to turn it adrift, and in many cases to become a charge upon your already exhausted treasury; for I find that you have got commissions down South now, engaged in some cotton-planting speculations, which I venture to say, will cost this Government thousands upon thousands of dollars. There is one clause in this section to which I wish to call special attention:

"And no person engaged in the military or naval service of the United States shall, under any pretense whatever, assume to decide on the validity of the claim of any person to the service or labor of any other person, or to surrender up any such person to the claimant."

I do not know that the first part of that clause, that they shall not decide upon the claim of any person to his slave, is very objectionable, that might well be left to the courts; but it is declared that they shall not surrender them up—what will be the effect of that? It will make these camps a place of refuge for the slave population, and that will necessarily incite insurbordination. They will flock there by hundreds and by thousands. We know they are doing so now. One of the reasons why our fathers declared they took up arms against the British king was, that "he had incited insurrection among us." This clause has that tendency, to cause insurbordination, insurrection.

There is another reason why I think you should do nothing like this. All of the slave States have laws and regulations for the emancipation of slaves.

The United States must be governed by those laws, if it attempts to interfere with them. I need but state to so learned a lawyer, as I know the Senator from New York to be, the proposition, and he will at once see that when you go to interfere with the property of the people of any of the States, secured by their constitution and their laws, you must do it in obedience to their State laws. They must govern, and do govern, in the United States courts in all the States of the Union, concerning every description of property that can be legitimately held in the States. This bill, then, is a violation of the laws and constitutions of the States. It sweeps them all by the board. I know it is not common here to accord to the States many rights; the tendency is to a consolidated despotism; but all admit that they have some rights; all admit that they have control over this institution of African slavery within their borders; and yet, notwithstanding that, you now propose to pass a bill putting that institution virtually out of existence, and emancipating their slaves, not only in violation of their local laws regulating the subject, but in derogation of every right that those people may have in that property, without even giving them the opportunity of litigating their rights or of making their defence in a court of justice. Why, sir, many of those men may be innocent of this charge of treason. You do not allow them what you now accord to the lowest and most degraded petty larceny thief, an opportunity to vindicate his innocence; but you charge them, you condemn them, you forfeit their estates, you turn them out to wander as vagabonds through the earth, all this you do without hearing them before any judicial tribunal whatever; and you do this by the action of the American Senate, in this temple where we would suppose constitutional liberty and law delighted to dwell. Pause, Senators, before you go so far. We are now upon just such times as those in which Judge Story said those rash penalties of confiscation were passed in England, during times of civil war, when the reason is tossed to and fro as a reed is driven by the fierce hurricane in a storm. It is no time for such things. I had supposed that it would be kept out of this Senate, but I regret to say that the most learned judges and lawyers here appear absolutely to be ready to overthrow the Constitution. I will do them the justice, however, to remark, that I dare say they believe what they are doing is constitutional.

Sir, what will be the effect if this section should become a law? It will result virtually in the emancipation of the slaves in all the States. You turn loose the slaves of all those parties who are engaged in this rebellion, and, in the cotton States, nearly all the people are in it. What you will leave them will not be worth having, particularly when they are in the midst of such a free negro population; and that is the object. The Senator from Kansas, (Mr. POMEROY,) who has the negrophobia—if he will allow the word; I do not use it offensively—as badly as any man I ever saw, smiles when I say this. It is what he wishes, what he wants. The effect will be as I have stated, and hence I have called it an insidious attempt to do indirectly what they would not attempt to do directly. I would much prefer that gentlemen should march up to the work at once, unfold their flag, proclaim their purpose, and propose a law to free all the slaves. That, in my judgment, would be more direct, more manly, more to be approved by open, candid, sincere men.

It is true there is a clause in the bill providing for colonization. Why, sir, that clause amounts to nothing. You will colonize no negroes under it, or, if any, very few. In the first place, it is to be voluntary colonization. No man ever spoke more truly than my colleague did the other day. When speaking of the negro, he said he was not a migratory animal—I do not know that I quote his words—he would stay where you would leave him; he would not be willing to go abroad to seek other homes. All the other races of the earth have gone to every part of the globe, but who ever knew of a woolly-headed

negro to go from his native land, except when under the influence of others? Why, sir, there never would have been one of them in this country, had it not been that the Anglo-Saxon brought him here by force. They were brought here by our English forefathers after Queen Elizabeth, by orders of council, authorized the slave trade, and by our own people, particularly our New England brethren, for they did the most of this slave-trading business, and held on to it with very great tenacity so long as they found it profitable. They kept in the Constitution a clause allowing them to indulge in this trade for twenty years after it was formed. Their lands were too poor to allow slaves to work them profitably, and they sold them south; but they found the trade still profitable, and they held on to it for twenty years after the formation of the Constitution. The negro would never have been here but for the instrumentality of our own people and our English ancestors; he would have remained a savage and cannibal in his native Africa. Well, sir, what will you do with them? Will you turn these four millions of slaves loose? That will be the effect of this bill. As to colonizing them, unless you do it by compulsion, I tell you it will not be done. It never has been done, and it never will be, except to a very limited extent. Why, sir, what has this colony at Liberia done? After many years of the most assiduous labor, they have got but few, and many of these went there in order to be free, for they were emancipated upon the condition that they should go there; and many who went under that condition, to my knowledge, have returned. The negro, while he remains in this country, should be held as a slave. It is best for both the black and the white man that it should be so. The free negroes are the most worthless, thriftless, lazy, vagabond population on earth.

But, sir, this bill provides that you shall buy homes for them, and colonize them. How much money would it take? The Senator from Virginia, (Mr. WILLEY,) who seems to have had a good deal to do with this Colonization Society, said, the other day, that it would take $500 a head. If so, it would cost you two thousand millions of money to colonize these slaves. Are you in a condition to bear such an expenditure as that? I suppose this Government owes to-day a thousand millions of dollars. Your expenses in carrying on this war are said to be three or four millions a day? If the slaves were willing to go, could you bear the expense? Certainly you could not, and therefore I say this colonization clause in the bill amounts to nothing. I would not give a fig for it, or all the negroes that you will ever colonize under it. It is a mere tub that you have thrown out to let those people who dislike free negroes to come among them, sport with for a while.

Senators, if your object is not the emancipation of all the slaves, if you go on with this kind of legislation, you will soon make all the people in the slave States think so. I have been very much opposed to the legislation that has been under consideration here. I knew it would irritate; I knew it would do no good; I knew it would do much harm; I knew it would make many, now friendly, enemies to this Union. What has been done in the last two months on this subject of slavery? You have passed the resolution recommended by the President, proposing to give aid to the border States to effect emancipation. You have abolished slavery in the District of Columbia, and in that bill you inserted a clause allowing a negro to testify, and by another clause the oath of the master is made unequal to that of his negro. Then you have passed an article of war preventing any officer of the army surrendering up a fugitive slave under penalty of dismission from the service. The Senator from Delaware (Mr. SAULSBURY) proposed to amend that bill by inserting a provision that if any officer should engage in enticing or decoying a slave from the service of a loyal master, he should be subject to a like penalty. You refused to agree to it. If you wanted equal and exact justice, why did you not insert that pro-

vision to punish with dismissal from the service any officer who should entice a slave from a loyal owner—in other words, who should engage in negro stealing. You chose not to do it. What is the result? I regret to allude to these things. It is a fact published in the newspapers, and I was told by gentlemen from Baltimore not long since, that from General Banks' column there passed through the city of Baltimore, under military escort, some ninety slaves, and they were carried and turned loose in Philadelphia. Whether they were the slaves of loyal men or not, I do not know; but there you find the military arm of the Government is being used to send runaway slaves to the free States. I hear no complaint from Republicans about that; but if one slave were delivered up to his owner, you would hear great complaint about it.

I saw it stated recently in the newspapers, and one of my colleagus in the House told me night before last he had letters from his district informing him, that from the northern part of Kentucky there had been taken forty-five negroes from loyal masters. They were taken in a Government steamboat which passed Catlettsburg, in Kentucky, to Ohio, and turned loose, and they were taken by order of those in command of the post somewhere on the Big Sandy. We hear no complaint about this from the other side of the Chamber. If the amendment proposed by the Senator from Delaware had been inserted in this article of war, those gentlemen would have been dismissed from the service. In addition to this, you have repealed all the disabilities on these negroes from carrying the mails. Senators and Representatives have openly advocated the arming of the slaves. Propositions have been introduced into Congress to reduce sovereign States to Territories. A great deal of what you have done, I have heretofore said was unconstitutional. It will be very hard to make the people who are interested in this kind of property believe that your object is not to destroy it. I speak plainly, but I trust without offence. With all these acts before them, notwithstanding your professions, your delarations in the way of congressional resolutions, party platforms, and the President's messages, that you have no right, desire, or intention to interfere with slavery in the States, you will find it very hard to make them believe that such is not your object. The people of the slave States would be stupid, indeed, if they doubted, after the many evidences you have given them in the last few months, that your intention and object was not to destroy the institution of slavery. I know there are Republicans who do not favor the measures to which I have alluded, but so far their numbers have been too few to prevent the legislation to which I have referred. Extreme anti-slavery men desire the war as an instrument to accomplish the destruction of African slavery. They do not desire the Union to be reconstructed unless slavery shall first be abolished. If these men thought that slavery would not be abolished by the war, and that the Union would be reconstructed as it was before the commencement of this unfortunate civil war, they would oppose the war, and would not furnish either men or money to carry it on; prominent anti-slavery men, both in and out of Congress, have so declared? If our form of Government, our constitutional rights, our civil liberties, are preserved, the radical and extreme men, who now hold sway, who prefer the destruction of the domestic institutions of the southern States to the preservation of the constitutional Union of our fathers, must be repudiated by the people, and conservative men, who revere the Constitution and have a just appreciation of civil and constitutional liberty must fill their places. If that is not done, I have but little hope of preserving our system of Government. If the people will rally boldly and fearlessly to the standards of those who are determined to protect, preserve, and enforce the Constitution, we may be enabled, to save our system of Government, and transmit our glorious Constitution to those who are to come after us.

I will now say a few words upon the fourth section of this bill, and in order

that I may not misrepresent it, I will read it. I hope the Senate will listen to this section. It gives the Executive most extraordinary power:

SEC. 4. *And be it further enacted*, That it shall be the duty of the President of the United States, as often as in his opinion the military necessities of the Army, or the safety, interest, and welfare of the United States in regard to the suppression of the rebellion shall require, to order the seizure and appropriation, by such officers, military or civil, as he may designate for the purpose, of any and all property confiscated and forfeited under and by virtue of this act, situated and being in any district of the United States beyond the reach of civil process in the ordinary course of judicial proceedings by reason of such rebellion, and the sale or other disposition of said property, or so much of it as he shall deem advisable.'

Was there ever, in the history of this or any other well regulated free Government, a proposition to clothe the Executive with such vast and extraordinary powers? The power you propose to give the President is not only unwise and inexpedient, but it is subversive of the Constitution. The powers of Congress and of the Executive are limited by the Constitution. The Constitution confers on the President no judicial power. This bill clothes the Executive with judicial and ministerial functions. It arms him, through his deputy, with power to seize and sell the property of six millions of people. That is the language of your bill. I say six millions of people, for I suppose there are that many now engaged against the Government. Whether they will continue so or not, I do not know. I do not believe the passage of this bill would cause them to lay down their arms, but would urge them to more resolute and stern resistance. The President, under this bill, through any officer, civil or military—yes, sir, he can clothe the most petty judge of the District of Columbia, or the most insignificant popinjay of a lieutenant of the Army, with power to go into these States, and seize and sell any or all of the property that is confiscated by the terms of this bill. It confiscates the property of all who are engaged in this rebellion with arms in their hands, or who are giving aid and comfort to it, that property being situated where the process of law cannot reach. That is the power you give to the President of the United States. This contemptible justice, or this lieutenant, if you please, is armed with the power to go and seize any and all of the property at the President's discretion, and to sell it. He is to be the judge. The Senate of the United States is about to clothe the President with such a power as that. Why, sir, you not only clothe the President and his agents with judicial, but with ministerial functions. He is the judge; he is the marshal. You allow him to send this little lieutenant or this justice of the peace, to judge whether or not this property belongs to persons who have been in arms or giving aid and comfort to the rebellion, and after, in his office as judge, he decides the grave question as to whether the parties who own the property have been guilty of treason or not. Then you clothe him with the power of a marshal to put it up and sell it under the auctioneer's hammer, and to put the money in the Treasury; and what is most remarkable, from these agencies of the President you require no oath of office, no bond for the faithful performance of the duties imposed upon them by the President; your judges are required to take an oath of office, your marshals are required not only to take an oath of office, but to give bonds with sufficient security, that they will faithfully perform the duties of their offices.

Sir, I venture to say that since the organization of civil Governments there never was, in any country that had any respect for liberty or for law, an effort to clothe a magistrate with such extraordinary powers; and yet you clothe this magistrate with that power without limitation, and without restriction. The only limitation is the will of the President. I have thought that the President's functions were executive alone. If the Constitution would allow it, (which it certainly does not, for the provisions that I have read are plainly violated by this section,) I would clothe no man with such power. I would not care how wise or how virtuous he might be. If it were possible to endow one man with all the wisdom of Solomon, the justice of Aristides, and the stainless

purity and elevated patriotism of Washington, I would not clothe him with such power, and no people who love and wish to preserve their liberty ever will. As you break down the departments of your Government and allow the magistrates appointed under any one of the different departments to exercise functions belonging to the other, you make a breach in the constitutional ramparts which our fathers have thrown around our liberties. It should never be done. No free, liberty-loving people, who respect and wish to retain their liberties, will ever clothe a magistrate with such power. I know that extraordinary power in the hands of a wise, virtuous, and just man, might be used temporarily to promote the best interest of the State. I know Rome was safe when she called the wise, the virtuous, and the patriotic Cincinnatus from the plow, and clothed him with dictatorial power; but I know that she had cause, grevious cause, to mourn the dictatorships of Sylla and Caius Marius.

Senators, never, never clothe your magistrates with these extraordinary powers. Let them exercise only those functions that are given them by the Constitution of our country. Keep well and plainly marked all the distinctions that the Constitution makes in the co-ordinate departments of the Government. As you depart from them, you approach a despotism; for the very essence and meaning of despotism is the concentration of all power in one man. Let the legislative, executive, and judicial departments exercise the powers and functions conferred upon them by the Constitution, and no more. Do not suffer one department to encroach upon another. More particularly should we be careful in times like these, when every effort is being made by some persons to overthrow the Constitution. Let us stand by it as the ark of our safety. Sir, you may talk about the Union as you please. I love the Union; as our fathers formed it, it is worthy of my love, my devotion; but I love the Constitution more. If you preserve the Union, you must protect the Constitution. The Union without the Constitution would not be worth preserving. What care I for a territorial Union, even if it were to contain forty times the area of square miles that ours does, if in it we have despotism instead of constitutional liberty? For me, sir, I would rather have six feet of the meanest earth with the liberty that the Constitution of my fathers conferred upon me, than to live in an empire on a continent seagirt, with the Constitution overthrown, and my liberties and the liberties of those who are to come after me stricken down. I love the constitutional Union because of the liberty, the Constitution, the bond of that Union, throws around me, and throws around the people. Its territorial extent, its grandeur, its power is subject of admiration, but not of love. My love is for the constitutional liberty that our fathers gave us when they gave us the Constitution: all else but challenges my admiration. It may gratify my vanity; but the constitutional liberty that our fathers gave us challenges my love and my ardent devotion. Allow me to read one single paragraph from Mr. Webster on this subject in the speech he made on Jackson's protest:

"The first object of a free people is the preservation of their liberty; and liberty is only to be maintained by constitutional restraints and just divisions of political power. Nothing is more deceptive or more dangerous than the pretense of a desire to simplify Government. The simplest Governments are despotisms; the next simplest limited monarchies; but all republics, all Governments of law, must impose numerous restraints and limitations of authority. They must be subject to rule and regulation. This is the very essence of free political institutions. The spirit of liberty is, indeed, a bold and fearless spirit; but it is also a sharp-sighted spirit. It is a cautious, sagacious, far-seeing intelligence. It is jealous of encroachment, jealous of power, jealous of man. It demands checks; it seeks for guards; it insists on securities; it entrenches itself behind defenses; and fortifies with all possible care against the assaults of ambition and passion. It does not trust the amiable weaknesses of human nature, and, therefore, *will not permit power to overstep its prescribed limits, though benevolence, good intent, and patriotic intent come along with it.* It seeks for duration and permanence. It looks back and before; and, building on the experience of ages which are past, it labors diligently for the benefit of ages that are to come. *This is the nature of constitutional liberty;* THIS IS OUR LIBERTY. A separation of departments, and the preservation of the lines of division between them, is the fundamental idea in the creation of all our constitutions; and doubtless the continuance of regulated liberty depends on the maintenance of these boundaries."

Thus spoke the great Webster. Senators, I beg you to ponder and digest

the philosophy and the wisdom contained in that short but eloquent and pointed extract. You wish to consolidate; you wish to clothe the President with the power through the most insignificant instruments, such as the lowest order of your judiciary, and the very lowest order of your military, to go forth armed with judicial and ministerial power to sell an amount of property that never before was put under the auctioneer's hammer—an amount greater than that which the Prætorian bands put under the hammer when they struck off the Roman empire to the highest bidder; and yet perhaps you will pass it; but in the name of the Constitution of my country, in the name of the liberties of the people, I make my protest against it. I invite the attention of Senators to this section of the bill; and I venture to say there never was heretofore, in this or any other country, where the rights of property and liberty were appreciated, a proposition to confer such extraordinary power upon the executive.

The sixth section of the bill is an attempt to assimilate the punishment of treason to the proceedings for the punishment of smuggling. The forfeiture specified in the first section of the bill is a forfeiture for treason, and for treason there can be no forfeiture of estate except for life, and that must follow a judicial attainder. The party must be found guilty in court by a jury of his peers, before there can be a forfeiture, even for life, of his estate. I believe that if the doctrine of condemning property for smuggling in the way it is done had been met by a fearless spirit at the time, the current of decisions would have been different; but we know the reason assigned for it. We have the constitutional right to pass laws to lay and collect taxes, duties, and imposts, and of course to prescribe the terms and conditions upon which goods may be imported; and in order to prevent infractions of the law, property which is attempted to be smuggled, is, by the law, forfeited. It is a forfeiture of the thing that is being used in violation of the law. That is the principle upon which it rests. The forfeiture of goods for breach of the revenue laws has, however, slight, if any, analogy to the confiscation of property as a punishment for the crime of the owner.

While you keep in view the provisions of the Constitution which I have read, I do not believe there is any power known to the logician or any art of the rhetorician that can give to this bill the semblance of constitutionality.

THE WAR POWER.

There is one other subject that I beg leave to refer to somewhat in detail. The right to confiscate property has been claimed under the war power. Petitions have been presented here almost every day of the session asking that the property of the rebels be confiscated and their slaves set free under the war power. The Senator from Massachusetts, (Mr. SUMNER,) I think, has presented a wagon load of them this session. I am aware that it is claimed that under the war power the President and his generals have the right to emancipate slaves and confiscate other property, and that is derived from the power which it is said the President has as Commander-in-Chief of the Army in time of war to declare martial law. Now, I deny that the President of the United States, that any general commanding our forces, ay, that the Government by virtue of any or all of its departments can declare martial law. There is no such power given in the Constitution of our country, and whoever has attempted, or shall hereafter attempt, to exercise it is a usurper—he overthrows the Constitution of his Government. That is the position I take; and if you look into it closely I do not think you can doubt its truth. Now, what is this martial law? I will read a definition, as good a one, perhaps, as any you will find, in Jacobs' Law Dictionary. Jacobs, in his Law Dictionary defines martial law to be—

"The law of war that depends upon the just but arbitrary power and pleasure of the King or his lieutenant; he useth absolute power so that his word is law. A distinction should be made between martial law as formerly executed, entirely at the discretion of the crown and unbounded in its authority as to persons or crimes, and that at present established, which is limited as to both."

The Duke of Wellington defined martial law to be—

"The will of the commander-in-chief."

Mr. Wharton, in his Law Dictionary, defines it to be—

"That rule of action which is imposed by the military power, and has no place in the institutions of this country, unless the articles of war established under the mutiny acts be considered as of that character. The prerogative of proclaiming martial law within this kingdom is destroyed, as it would appear, by the Petition of Rights."

The latter part of that definition I shall refer to in future. Martial law is the absolute will of the commander-in-chief; his will is substituted for law; and that is the power that is claimed now by many of our generals in the field; it is claimed and exercised to-day by the President of the United States through his subordinates, his generals in the field. It is a power which, whenever exercised, in my judgment is an overthrow of the Constitution of the country. What are the powers of the President? His powers are limited by the fundamental law. The Constitution says "he shall take care that the laws are faithfully executed." The Constitution, treaties, and laws made in pursuance thereof are the laws the President is to see executed; if he goes beyond these he violates the Constitution. The President has no legislative or judicial power. Under the Constitution the judicial power is conferred on a distiuct and independent body of magistracy, the judiciary. The legislative functions are devolved on a separate and distinct body of magistrates, namely, the Legislature, of which we are a part. If you concede to the President the power to declare martial law, you clothe him with power to overthrow the Constitution and suspend all the laws, and his will becomes the law. He is then invested with executive, legislative, and judicial functions, and becomes an absolute despot. In our Government the President can exercise no implied powers; the exercise of all such powers is, by the Constitution, conferred upon another and different body of magistracy. Congress alone can exercise implied powers. Such is the express language of the Constitution. The last clause of the eighth section of the first article of the Constitution declares that Congress shall have power.

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Conststution in the Government of the United States or in any department thereof."

The President can legitimately exercise no power except such as is conferred upon him by express provisions of the Constitution and the laws and treaties made in pursuance thereof.

Those who are charged with the preservation of the Constitution have no right to overthrow it. The Constitution secures to the people certain rights, certain immunities, and certain privileges, which every citizen in this broad land is entitled to; and there is no power on earth, save the sovereignty, to wit, the people of the States of the Union themselves, that has the legitimate right or power to alter, abridge, set aside, or suspend. The sovereignty, the people of the States of the Union, through their representatives, have the right and power to amend, alter, or change the Constitution in the manner prescribed in the Constitution. Then there is left to the sovereigty, the people, in the last resort, the divine right of revolution by which they may, by force, throw off a Government which they cannot rid themsevles of otherwise, when it becomes oppressive and subversive of their liberties. The Constitution says that "no bill of attainder or *ex post facto* law shall be passed;" and then it says many

other things, a few of which I will read, from the amendments to the Constitution, which set forth some of the rights secured to the people:

"ART. 1. Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abringing the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

"ART. 2. A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

"ART. 3 No soldier shall, in time of peace, be quartered in any house withhout the consent of the owner, nor in time of war but in a manner to be prescribed by law.

"ART. 4, The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

"ART. 5. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardly of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

"ART. 6. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

"ART. 7. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

"ART. 8. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

These are rights secured to the people of the United States by the Constitution of our fathers; and if you clothe the President with the power to declare martial law, you not only overthrow all these rights, but you overthrow our entire institutions, the President's will becomes the law instead of the Constitution of the country. Senators, if you clothe him with that power, you give him the power to destroy your free government. If he has the right to declare martial law in one city, say in the city of St. Louis, he has the right to declare it in a whole State; he is the judge of the necessity. Indeed, martial law has been declared in the entire State of Missouri. If the President has a right to declare it in one State, he has a right to declare it in all the States. Suppose he should think the necessity exists—and those who contend for this doctrine say he is to judge of the necessity—to declare martial law throughout the whole United States, what will be the result? Your Congress would be overthrown, or it would exist upon his will and pleasure only; your courts would all be overthrown, your State governments would be overthrown, and the President might enter this Hall, as Cromwell entered the chamber where the Long Parliament were sitting, and speak to us as Cromwell did to them, and tell us to go hence. He might come to this Congress as Nepoleon did to the French Assembly on one occasion, and scatter us like beasts. This is the inexorable logic of the position; there is no escape from it. That power is claimed, and it is being exercised this day; one of your generals is doing it with a vengence. When you clothe the President with this power, if the war should last twenty years, he can perpetuate his authority that length of time. What has been going on in Missouri? The constitution of that State prescribes the right of suffrage, and I will read an extract from the constitution of Missouri upon that point, and show you what has been done in Missouri to prove how Abraham Lincoln could perpetuate his power as long as this war exists, if you admit this most monstrous of all heresies that the President can declare martial law, and there would be nothing to prevent it unless an indignant people shall rise up and smite the usurper to the earth. The tenth section of the third article of the constitution of Missouri is in these words:

"Every free white male citizen of the United States who may have attained to the age of twenty-one years, and who shall have resided in this State one year before an election, the last three months whereof shall have been in the county or district in which he offers to vote, shall be deemed a qualified elector of all elective offices: *Provided*, That no soldier, seaman, or marine in the regular Army or Navy of the United States shall be entitled to vote at any election in this State."

Section fourteen is in these words:

"The General Assembly shall have power to exclude from every office of honor, trust, or profit, within this State, and from the right of suffrage, all persons convicted of bribery, perjury, or other infamous crime."

These are the only clauses in the constitution of Missouri touching the right of suffrage. Now what has occurred there? A major general of the United States has issued this order:

HEADQUARTERS DEPARTMENT OF MISSOURI,
ST. LOUIS, *February* 15, 1862.

[General Order No. 41.]

1. At the request of the acting Governor of Missouri, it is hereby ordered that at all future elections in this State, whether for State, municipal, county, or town officers, every voter will be required to take the oath of allegiance prescribed in article six of the ordinance of the convention, dated October 16, 1861. Officers of the polls will see to the execution of this order. If they receive votes of persons not taking the oath, they will be arrested and tried for military offense, and the election declared null and void.

* * * * * * * * * * *

By command of Major General Halleck.

N. H. McLEAN,
Assistant Adjutant General.

The oath prescribed is in the following terms:

"I do solemnly swear that I will support the Constitution of the United States and of the State of Missouri; that I will not take up arms against the Government of the United States nor the provisional government of the State of Missouri; nor give aid and comfort to the enemies of either during the present civil war. So help me God."

There you see that a military officer, as he says, according to the advice of the acting Governor of Missouri, has taken upon himself to prescribe the qualifications of voters, and those qualifications in direct conflict with the constitution of the State where he is acting. All this appears to be approved by the President—he at least has not annulled it. Now, suppose that Abraham Lincoln, President of the United States, were to declare martial law throughout the whole Union, and we were on the eve of the election of the next President, and he himself was a candidate, could he not publish a military order declaring that all those who did not vote the Republican ticket, or even that all who did not vote for Abraham Lincoln for President should not be permitted to vote? Could he not compel them to take an oath that they would vote in a certain way? Clearly. Thus you see that you clothe him, by this extraordinary doctrine, with the power to perpetuate his sway. There is no logical extrication from the position. Those who claim that the President or his commanders have a right to declare martial law, cannot escape from the position.

General Halleck has done a little more in Missouri. I do not read these papers with any view of making a special assault upon him or anybody else; but I wish it distinctly understood that I think General Halleck has transcended his power and overthrown the Constitution; and he and the President both deserve and should receive the sternest rebuke that the representatives of a free people can give. I read them to elucidate the argument. That general made another very extraordinary order in Missouri, which I will now read:

HEADQUARTERS DEPARTMENT OF MISSOURI,
St. Louis, December 12, 1861.

[General Orders, No. 24.]

1. The suffering families driven by rebels from southwestern Missouri, which have already arrived here, have been supplied by voluntary contributions made by Union men. Others are on the way, to arrive in a few days. These must be supplied by the charity of men known to be hostile to the Union. A list will be prepared of the names of all persons of this class who do not voluntarily furnish their quota, and a contribution will be levied on them of $10,000, in clothing, provisions, and quarters, or money in lieu thereof. This levy will be made upon the following classes of persons, in proportion to the guilt and property of each individual: First, those in arms with the enemy, who have property in this city. Second, those who have furnished pecuniary or other aid to the enemy, or to persons in the enemy's service. Third, those who have verbally, in writing or by publication, given encouragement to insurgents and rebels.

2. Brigadier General, S. R. Curtis, United States volunteers, Lieutenant B. G. Farrar, provost marshal general, and Charles Borg, Esq., assessor of the county of St. Louis, will constitute a board of assessors for levying the aforementioned contribution. In determining the amount of property of the individuals assessed, the board will take into consideration the official assessment lists for municipal taxes.

3. As soon as any part of the contribution has been assessed by the board, the provost marshal general will notify the parties assessed, their agents, or representatives, stating the amount of provisions, clothing,

or quarters, and the money value thereof, required of each, and if not furnished within the times specified in such notice, he will issue an execution, and sufficient property will be taken and sold at public auction, to satisfy the assessment, with costs, and a penalty of twenty-five per cent. in addition. When buildings, or parts of buildings, are to be used, and where any of the sufferers are to be quartered on families, care should be taken to produce as little inconvenience to the owners or families as possible, this not being considered a military contribution levied upon the enemy, but merely a collection to be made from friends of the enemy for charitable purposes.

4. If any person upon whom such assessment shall be made shall file with the provost marshal general an affidavit that he is a loyal citizen, and has been true to his allegiance to the United States, he will be allowed one week to furnish evidence to the board to vindicate his character; and if at the end of that time he shall not be able to satisfy the board of his loyalty, the assessment shall be increased ten per cent., and the levy immediately made.

5. The supplies so collected will be expended for the object designated, under the direction of the provost marshal general, with the advice of the State sanitary commission. Where money is received in lieu of supplies, it will be expended for them as they may be required. Any money not so expended will be turned over to the sanitary commission for the benefit of sick soldiers. A strict and accurate account of their receipts and expenditures will be kept and returned to these headquarters.

6. Any one who shall resist, or attempt to resist, the execution of these orders, will be immediately arrested and imprisoned, and will be tried by a military commission.

By order of Major General Halleck.

JOHN C. KELTON, *A. A. G.*

Here you have another instalment of martial law. Here is an order from one of your generals in the field, taking $10,000 from citizens of St. Louis without judicial process—not as a military assessment, but in the way of charity, as he calls it, for a purpose prescribed by himself. Do you not see that generals now in the field are overthrowing the constitutions of the States and the Constitution of the United States; and yet you, who pretend to be friends of constitutional liberty, sanction it? Do you not know that by so doing you yield every sacred guarantee of your liberties contained in the Constitution of your country? You even yield to the will of a despotic President the power of driving you from these halls. Under this power he can at his will drive the Supreme Court, and he can drive the State Legislatures from their places. He can do as Halleck has done—by his mere *ipse dixit* prescribe the qualifications of voters by military order; and by levying assessments, as he has done on men at St. Louis, deprive the people of any State within his command of every shilling they have and all their property, and devote it to whatever purpose he pleases. The President suffered all this; for I took to him the very order of General Halleck which has just been read, at the instance of a schoolmate and friend in Missouri, and told him its enormities, and asked him to have it corrected. He told me he would present the matter to his Cabinet. He kept the papers several days, and returned them with a very brief note, saying that he could not at present do anything with it. A people who will tamely submit to such an usurpation of their constitutional rights, to such an assault upon their dearest liberties and most sacred interests, do not deserve to be free; and unless they are aroused to a just appreciation of their rights and liberties, military despots will soon have their heretofore free limbs in chains and fetters. Such acts as these are being done, and, so far from doing anything here that would sanction in the least this assumed power of the President to declare martial law, the Senate owes it to itself, owes it to the Constitution of the country, in the name of the public liberties, to protest in the most solemn form against the extraordinary powers assumed by Major General Halleck and others in authority. As faithful sentinels of liberty, as the guardians of the Constitution, chosen by the people and the States, Congress should, in my judgment, in the most unequivocal manner, visit these usurpers with the harshest censure. We can, however, get no censure against those who overthrow the Constitution in these degenerate days.

Now let me examine for a moment the proposition of Mr. Adams. I have here a speech made by the Senator from Massachusetts, (Mr. SUMNER,) in which he rests this doctrine upon the authority of Mr. Adams. The honorable chairman of the Committee on the Judiciary (Mr. TRUMBULL) rests it on the war power; but I must do him the justice to say, that I do not think he has ever claimed that the President had the right to proclaim martial law. He says the

power to confiscate necessarily flows from the power to carry on the war. In that, I think, he is greatly mistaken. But, sir, I will read an extract from the speech of the Senator from Massachusetts, made at Worcester, in October last:

"But there is another agency that may be invoked, which is at the same time under the Constitution and above the Constitution."

That is queer phraseology, under it and above it.

"I mean martial law. It is under the Constitution, because the war power to which it belongs is positively recognized by the Constitution. It is above the Constitution, because when set in motion, like necessity, it knows no other law."

I read in Horace when I was a boy, *necessitatas non habet legem*, and the gentleman applies that ancient maxim to this case.

"For the time it is law and Constitution."

It is strange that one who claims to be educated in all the refinements of New England liberty, should say that the war power is above the Constitution and the law. I have been taught to believe that there was no well defined liberty save in the supremacy of the law, that there was no regulated liberty save where the law was supreme; but it seems that the code of the Senator from Massachusetts is, that this martial law exists in this country, and that it is above all law and above the Constitution:

"The civil power, in mass and in detail, is superceded, and all rights are held subordinate to this military magistracy. All other agencies, small and great, executive, legislative, and even judicial, are absorbed in this transcendent triune power, which, for the time, declares its absolute will, while it holds alike the scales of justice and the sword of the executioner. The existence of this power nobody questions. If it has been rarely exercised in our country, and never in an extended manner, the power none the less has a fixed place in our political system. As well strike out the kindred law of self-defense, which belongs alike to States and individuals. Martial law is only one form of self-defense.

"That this law might be employed against slavery was first proclaimed in the House of Representatives by a Massachusetts statesman, who was a champion of freedom—John Quincy Adams. [Applause.] His authority is such that I content myself with placing the law under the sanction of his name, which becomes more authoritative when we consider the circumstances under which he first put it forth, then repeated, and then again vindicated it."

"It was as early as the 25th May, 1836, that Mr. Adams first expounded what he called 'the war power and treaty-making power of the Constitution.' Then it was that he declared:

"'From the instant that your slaveholding States become the theater of war, civil, servile, or foreign, from that instant the war powers of Congress extend to interference with the institution of slavery in every way in which it can be interfered with, from a claim of indemnity for slaves taken or destroyed, to the cession of a State burdened with slavery to a foreign Power.'

"Again, on the 7th of June, 1841, after many years of reflection and added experience in public life, he terrified slavemasters by showing that universal emancipation might be accomplished through this extraordinary power."

"Afterwards, on the 4th of April, 1842, for the third time he stated the doctrine in the House of Representatives and challenged criticism or reply. I forbear to read the whole speech, though it is worthy of constant repetition. An extract will suffice.

"'I lay this down as the law of nations. I say that the military authority takes for the time the place of all municipal institutions, slavery among the rest. Under that state of things, so far from its being true that the States where slavery exists have the exclusive management of the subject, *not only the President of the United States, but the commander of the Army has power to order the universal emancipation of slaves.*' [Applause.]

"And then again he announces in words further applicable to the present hour:

"'Nor is this a mere theoretic statement. Slavery was abolished in Columbia first by the Spanish General Murillo, and secondly by the American General Bolivar. It was abolished by virtue of a military command given at the head of the army, and its abolition continues to be law to this day.'

"The representatives of slavery fumed and raged at these words, and at their venerable author; but nobody answered them. And they have stood ever since in the records of Congress, firm and impregnable as adamant."

That is the position which is taken under shelter of the name of Mr. Adams. The Senator was very much mistaken when he said that nobody answered it. It is well for the Senator that he contented himself with resting it upon a dictum of John Quincy Adams. It affords but another evidence that very great and very learned men often, when distempered by a single idea—as I regret to say Mr. Adams was in the latter part of his life on the subject of African slavery—give utterance to the greatest and most astounding heresies. Mr. Adams did it in this case. If the Senator had looked into the Constitution of his country, if he had looked into the judicial decisions and into the legislative decisions upon this subject, or if he had looked into the elementary writers, he would have found precedent against him; but it is a very convenient way to

cloak one's self under the mantle of a great name, particularly when it is sought to impose on the ignorant and credulous. I will show you that this position of Mr. Adams was answered, answered at the time, answered in a manner that the Senator from Massachusetts and all the host that follow his standard never have met, and never will meet, in successful argument. It was answered by a distinguished citizen of Kentucky, by Judge Nicholas, an extract from the decision of whom I read a moment ago on another branch of the subject. Judge Nicholas issued a pamphlet entitled Martial Law, in 1842, in which he reviewed the position of Mr. Adams in a bold, clear, lucid, logical argument, that I defy the Senator from Massachusetts to meet successfully. I shall have occasion to read a few extracts from that pamphlet before I am through; but before I do that I beg to read from Mr. Lieber. He speaks upon this, as he does upon all other subjects discussed by him, with great force and wisdom. At page 110 of his work on Civil Liberty and Self-Government, he says:

"All continental Governments which were bent on defeating the action of the new constitutions, even while they existed, resorted to declaring large cities and entire districts in 'a state of seige,' thus subjecting them to martial law. All absolute Governments, whether monarchical or democratic, have ever found the regular course of justice inconvenient, and made war upon the organic action of the law, which proves its necessity as a guarantee of liberty.

"It is obvious that whatever wise provisions a constitution may contain, nothing is gained if the power of declaring martial law be left in the hands of the Executive; for declaring martial law, or proclaiming a place or district in a state of seige, simply means the suspension of the due course of law, of the right of *habeas corpus*, of the common law, and of the action of courts. The military commander places the prisoners whom he chooses to withdraw from the ordinary courts before courts-martial. There were many French departments in a 'state of seige' before the *coup d'etat*. After it, all France may be said to have been so."

Thus a wise philosopher speaks. At page 117, the same author says:

"Ever since standing armies have been established, it has been necessary, in various ways, to prevent the army from becoming independent of the legislature. There is no liberty—for one who is bred in the Anglican school—where there is not a perfect submission of the army to the legislature of the people. We hold it to be necessary, therefore, to make but brief appropriations for the army. The King of England cannot raise an army, or any part of it, without act of Parliament; the army estimates are passed for one year only, so that were Parliament to refuse appropriations after a twelve month the army would be dissolved. The mutiny bill, by which power is given to the king to hold courts-martial for certain offenses in the army, is likewise passed for a year only; so that, without repassing it, the crown would have no power even to keep up military discipline."

Thus you see that our English ancestors and their descendants on the other side of the water, have been more rigid on this subject than we have been. Our Army regulations are a permanent statute; their mutiny act that gives them the right to hold courts-martial is passed every year. Here, under the Constitution, our appropriations for the Army can extend to two years; they limit theirs to one year.

Upon the question of the power to declare martial law, I find but one decision where the matter came directly in issue, though there are many decisions that touch it incidentally. There is a case in the third volume of Martin's Louisiana Reports, (Johnson *vs.* Duncan *et al.*, syndics,) where the question was made directly; and that the Senate may see it, I will read one of the grounds before the court:

"A motion that the court might proceed in this case, has been resisted on two grounds:
"I. That the city and its environs were, by general orders of the officer commanding the military district, put, on the 15th of December last, under martial law."

There the point was made directly that the functions of the court were suspended in consequence of martial law having been proclaimed in New Orleans, so that there could be no dodging it. In delivering the opinion of the court, Judge Martin said:

"At the close of the argument, on Monday last, we thought it our duty, lest the smallest delay should countenance the idea that this court entertain any doubt on the first ground, instantly to declare, *viva voce*, (although the practice is to deliver our opinions in writing,) that the exercise of an authority, vested by law in this court, could not be suspended by any man.

"In any other State but this, in the population of which are many individuals, who, not being perfectly acquainted with their rights, may easily be imposed on, it could not be expected that the judges of this court should, in complying with the constitutional injunction, *in all cases to adduce the reasons on which*

their judgment is founded, take up much time to show that this court is bound utterly to disregard what is thus called *martial law*, if anything be meant thereby but the strict enforcing of the rules and article for the government of the Army of the United States, established by Congress, or any act of that body relating to military matters, on all individuals belonging to the Army or militia in the service of the United States. Yet we are told that, by this proclamation of martial law, the officer who issued it has conferred on himself, over all his fellow-citizens within the space which he has described, a supreme and unlimited power, which, being incompatible with the exercise of the functions of civil magistrates, necessarily supersedes them.

"This bold and novel assertion is said to be supported by the ninth section of the first article of the Constitution of the United States, in which are detailed the limitations of the power of the Legislature or the Union. It is there provided that *the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of invasion or rebellion, the public safety may require it.* We are told that the commander of the military district is the person who is to suspend the writ, and is to do so whenever, *in his judgment*, the public safety appears to require it; that, as he may thus paralyze the arm of the justice of his country in the most important case, the protection of the personal liberty of the citizen, it follows that, as he who can do the *more* can do the *less*, he can also suspend all other functions of the civil magistrate, which he does by his proclamation of martial law." * * * * * * *

"The proclamation of martial law, therefore, if intended to suspend the functions of this court or its members, is an attempt to exercise powers thus exclusively vested in the Legislature. I therefore cannot hesitate in saying that it is in this respect null and void. If, however, there be aught in the Constitution and laws of the United States that really authorizes the commanding officer of a military district to suspend the laws of this State, as that Constitution and these laws are paramount to those of the State, they must regulate the decision of this court.' * * * * * *

"If it be said that the laws of war, being the laws of the United States, authorize the proclamation of martial law, I answer that in peace or in war, no law can be enacted but by the legislative power. In England, from whence the American jurist derives his principles in this respect, 'martial law cannot be used without the authority of Parliament.' (5 Comyns, 229.) The authority of the monarch himself is insufficient. In the case of Grant *vs.* Sir C. Gould, (2 Hen. Bl. 69,) which was on a prohibition (applied for in the Court of Common Pleas) to the defendant as judge advocate of a court martial to prevent the execution of the sentence of that military tribunal, the counsel, who resisted the motion, said it was not to be disputed that martial law can only be exercised in England so far as it is authorized by the mutiny act and the articles of war, all which are established by Parliament or its authority, and the court declared it totally inaccurate to state any other martial law as having any place whatever within the realm of England. In that country, and in these States, by martial law is understood the jurisprudence of those cases which are decided by military judges or courts-marshal. When martial law is established and prevails in any country, said Lord Loughborough, in the case cited, it is totally of a different nature from that which is inaccurately called martial law, (because the decisions are by a court-martial,) but which bears no affinity to that which was formerly attempted to be exercised in this kingdom *which was contrary to the Constitution*, and which has been for a century totally exploded. When martial law prevails, continues the judge, the authority under which it is exercised claims jurisdiction over all *military* persons in *all* circumstances. Even their *debts* are subject to inquiry by military authority. Every species of offence committed by any person *who appertains to the army* is tried, not by a civil judicature, but by the judicature of the corps or regiment to which he belongs.

"This is martial law as defined by Hale and Blackstone, and which the court declared not to exist in England Yet it is confined to *military* persons. Here it is contended, and the court must admit if we sustain the objection, that it extends to *all* persons, that it dissolves for awhile the government of the State.

"Yet, according to our laws, all military courts are under a constant subordination to the ordinary courts of law. Officers who have abused their powers, though only in regard to their own soldiers, are liable to prosecution in a court of law, and compelled to make satisfaction. Even any flagrant abuse of authority by members of a court-martial, when sitting to judge their own people, and determine in cases entirely of a military kind, makes them liable to the animadversion of the civil judge. (Delolme 447, Jacob's Law Dict., *verbo* court-martial.) How preposterous then the idea that a military commander may, by his own authority, destroy the tribunal established by law as the asylum of those oppressed by military despotism.'

And Judge Debigny, in the same case, said:

"I will therefore examine how *martial law* ought to be understood among us, and how far it introduces an alteration in the ordinary course of government

"To have a correct idea of *martial law* in a free country, examples must not be sought in the arbitrary conduct of absolute Governments. The monarch, who unites in his hands all the powers, may delegate to his generals an authority as unbounded as his own. But in a Republic, where the Constitution has fixed the extent and limits of every branch of government, in time of war as well as of peace, there can exist nothing vague, uncertain, or arbitrary, in the exercise of any authority.

"The Constitution of the United States, in which everything necessary to the general and individual security has been foreseen, does not provide that in times of public danger the executive power shall reign to the exclusion of all others. It does not trust into the hands of a dictator the reins of the Government. The framers of that charter were too well aware of the hazards to which they would have exposed the fate of the Republic by such a provision; and had they done it, the States would have rejected a Constitution stained with a clause so threatening to their liberties. In the meantime, conscious of the necessity of removing all impediments to the exercise of the executive power in cases of rebellion or invasion, they have permitted Congress to suspend the privilege of the writ of *habeas corpus* in those circumstances, if the public safety should require it. Thus far and no further goes the Constitution. Congress has not hitherto thought it necessary to authorize that suspension. Should the case ever happen, it is to be supposed that it would be accompanied with such restrictions as would prevent any wanton abuse of power. 'In England,' says the author of a justly celebrated work on the constitution of that country, 'at the time of the invasion of the Pretender, assisted by the forces of hostile nations, the *habeas corpus* act was indeed suspended, but the executive power did not thus of itself stretch its own authority the precaution was deliberated upon and taken by the representatives of the people; and the detaining of individuals in consequence of the suspension of the act was limited to a fixed time. Notwithstanding the just fears of internal and hidden enemies which the circumstances of the times might raise, the deviation from the former course of the law was carried no further than the single point we have mentioned. Persons detained by order of the Government were to be dealt with in the same manner as those arrested at the suit of private individuals; the proceedings against them were to be carried on no otherwise than in a public place; they were to be tried by their peers, and have all the usual legal means of defence allowed to them, such as calling of witnesses, peremptory challenge of jurors,' &c And can it be asserted that while British subjects are thus secured against oppression in the worst of times, American citizens are

left at the mercy of the will of an individual, who may in certain cases, *the necessity of which is to be judged of by himself*, assume a supreme, overbearing, unbounded power? The idea is not only repugnant to the principles of any free government, but subversive of the very foundation of our own.

"Under the Constitution and laws of the United States, the President has a right to call, or cause to be called into the service of the United States, even the whole militia of any part of the Union, in case of invasion. This power, exercised here by his delegate, has placed all the citizens subject to militia duty under military authority and military law. *That* I conceive to be the extent of the *martial law*, beyond which all is usurpation of power. In that state of things the course of judicial proceedings is certainly much shackled, but the judicial authority exists, and ought to be exercised whenever it is practicable. Even where circumstances have made it necessary to suspend the privilege of the writ of *habeas corpus*, and such suspension has been pronounced by the competent authority, there is no reason why the administration of justice generally should be stopped. For, because the citizens are deprived temporarily of the protection of the tribunals as to the safety of their persons, it does by no means follow that they cannot have recourse to them in all other cases.

"The proclamation of the *martial law*, therefore, cannot have had any other effect than that of placing under military authority all the citizens subject to militia service. It is in that sense alone that the vague expression of *martial law* ought to be understood among us. To give it any larger extent would be trampling upon the Constitution and laws of our country."

Chancellor Kent, when he was chief justice of New York, in the case of a *habeas corpus* for the release of a man arrested by military authority, (reported in 10 Johnson, 333,) said:

"Nor can we hesitate in enforcing a due return to the writ when we recollect that in this country *the law knows no superior;* and that in England her courts have taught us, by a series of instructions and examples, to enact the strictest obedience to whatever extent the persons to whom the writ is directed may be clothed with power or exalted in rank.

"If ever a case called for the most prompt interposition of the court to enforce obedience to its process, this is one. A military commander is here assuming criminal jurisdiction over a private citizen, is holding him in close confinement, and contemning the *civil authority* of the State."

In addition to these authorities I find the following note to the case in 3 Martin:

"The doctrine established in the first part of the opinion of the court in the above case, is corroborated by the decision of the district court of the United States for the Louisiana district in the case of *United States vs Jackson*, in which the defendant, having acted in opposition to it, was fined $1,000. In *Lamb's case*, Judge Bay, of South Carolina, recognized the definition of martial law given by this court, expressing himself thus: 'If by martial law is to be understood that dreadful system, the *law of arms*, which in former times was exercised by the King of England and his lieutenants, when *his word was the law*, and his *will the power* by which it was *exercised*, I have no hesitation in saying that such a monster could not exist in this land of liberty and freedom. The political atmosphere of America would destroy it in embryo. It was against such a tyrannical monster that we triumphed in our revolutionary conflict. Our fathers sealed the conquest by their blood, and their posterity will never permit it to tarnish our soil by its unhallowed feet, or harrow up the feelings of our gallant sons by its ghastly appearance. All our civil institutions forbid it; and the manly hearts of our countrymen are steeled against it. But if by this military code are to be understood the rules and regulations for the government of our men in arms, when marshaled in defence of our country's rights and honor, then I am bound to say there is nothing unconstitutional in such a system..'" Car. law reports, 330.

Now, sir, it is plain from the authorities I have read, that the principle announced by Mr. Adams, under whose name the Senator from Massachusetss takes shelter, has no place in the constitution of your country, as expounded by the courts. I know it has been said by some persons that General Jackson, when he exercised the power of declaring martial law at New Orleans, was sustained by the law; but allow me to say to the Senate that that act of General Jackson has been denounced in every form as unconstitutional. It was so declared by the Supreme Court of Louisiana in the case I have read; it was so declared by the district court of the United States for the district of Louisiana; and the same principle was declared by Bay in South Carolina, and by Kent in New York. Allow me to tell you that committees in both Houses—a committee of the Senate and committee of the House of Representatives declared the same thing. I will read a short extract from the report of the Judiciary Committee of the lower House, a report made, I believe, by the worthy and talented Senator from Maryland, (Mr. PEARCE,) then a member of the House of Representatives:

"There is no martial law known to the laws of the United States but such as Congress has provided for the Government of the Army. That other martial law, which General Jackson claimed a right to establish, was never acknowledged in our country, and has never been tolerated in England since the time of William III, more than one hundred and fifty years since, when, in the Decleration of Rights, it was provided 'that the pretended power of suspending laws, and the execution of laws by regal authority, without consent of Parliament, is illegal;' and 'that the pretended power of dispensing with laws

by regal authority, as it hath been assumed and exercised of late, is illegal.' These declarations were afterwards, to make assurance doubly sure, incorporated in the Bill of Rights. (See De Lolme on the Constitution, Stephens's edition.) Hume, in his History of England, (fifth vol., 454,) in stating the instruments of power and oppression employed by the Tudors and the Stuarts, after describing the terrible jurisdiction of the courts of the Star Chamber and High Commission, says: "But martial law went beyond even these two courts, in a prompt, arbitrary, and violent method of decision. Whenever there was any insurrection or public disorder the crown employed martial law; and it was during that time exercised not only over the soldiers, but *over the whole* people. Any one might be punished as a rebel, or an aider and abettor of rebellion, whom the provost marshal or lieutenant of the county pleased to suspect.'

"It was this martial law which the Declaration of Rights put to an end in England, and which it has reserved for a country, where the people are the source of all power, to see revived and enforced by a republican general. This sort of martial law has no fixed boundaries, no prescribed principles. 'It is,' says Blackstone, (first vol., 413,) 'built on no settled principles, but it is entirely arbitrary in its decisions, and is, in truth, *no law*, but something indulged rather than allowed as a law—a temporary excrescence bred out of the distemper of the State.'

"Lord Loughborough, in 1792, (2 Henry Blackstone, 99,) declared that this vast, vague, and most dangerous power had no existence in England. 'It was contrary to the constitution, and had been for a century totally exploded.' So are the authorities in our own country."

We find judges in England, and all their law-writers, declaring there is no such power, yet it is claimed here, when the provisions in our Constitution are certainly more explicit than those in the Petition of Right or the Bill of Rights.

I dislike to trouble the Senate with decisions, but the power claimed is so extraordinary, so subversive of the Constitution and every principle of civil liberty, that I should like to put the question beyond dispute by the clearest and most indisputable authority. I will read one or two very brief extracts from a debate in the Senate on refunding the fine imposed on General Jackson by Judge Hall. Mr. BAYARD said:

"Martial law is a code specially applicable to the Army and the Navy and militia when called into actual service, and is a distinct code for their government Even in time of war, the private citizen, the non-combatant, cannot be subjected to the code which governs those engaged in warfare without a manifest violation of his civil rights."

Yet we find that this man, General Halleck, subjects to punishment those who are not in the military, and makes an assessment which in the very order he says is not a military assessment, going upon the theory announced by the Senator from Massachusetts, that martial law overthrows the whole civil law; that the Constitution and everything goes with it; in the language of Mr. Adams, in the speech from which I have just read, "it is all swept by the board." In that debate, on the refunding of General Jackson's fine, Mr. Buchanan said:

"The Senator from Delaware (Mr. BAYARD) had been discharging his heavy artillery against nothing. He had not even a target to aim at. It had never been contended on this floor that a military commander possessed the power, under the Constitution of the United States, to declare martial law. No such principle had ever been asserted on this [the Democratic] side of the House. He had then expressly declared (and the published report of the debate, which he had recently examined, would justify him in this assertion) that we did not contend, strictly speaking, that General Jackson had any constitutional right to declare martial law at New Orleans; but that, as this exercise of power was the only means of saving the city from capture by the enemy, he stood amply justified before his country for the act. We placed the argument not upon the ground of strict constitutional right, but of such an overruling necessity as left General Jackson no alternative between the establishment of martial law or the sacrifice of New Orleans to the rapine and lust of the British soldiery."

Mr. Berrien, who reported the bill from the Judiciary Committee of the Senate, said in the report:

"In the absence of any specific instructions from the Senate, and looking to the discussions which have led to the reference of the bill, the committee have come to the con-

clusion that they will best fulfill their duty to the Senate by reporting it with an amendment, placing the restoration of the fine imposed on General Jackson by Judge Hall on grounds which do not involve any censure of either of the parties in this bygone transaction, nor in any degree arraign the conduct of the patriotic citizens of New Orleans; but simply protect the Senate from the possible inference that, in passing this bill, it has acknowledged the legal authority of a military officer to establish martial law within the limits of this free Republic. They accordingly report the bill with an amendment."

I could give many other extracts, but I shall forbear. I have certainly shown, by the highest authority, that the assertion of Mr. Adams was wholly unfounded; and I defy the Senator from Massachusetts, who places the authority of his statement under the shield of that name, to meet the argument, to adduce the law, the decision of the court, or to find the assertion of the power in any elementary writer of any note. I have shown that the power does not exist from the elementary books; I have shown it from the decisions of the courts; I have shown it from the reports of committees of Congress; I have shown it from the debates of Congress. I venture to assert that the power will ever rest under the shade of the name of John Quincy Adams. A great name, I admit, but no more astounding heresy ever fell from the lips of a great man—one utterly subversive of the Constitution, and one that if carried out would overthrow our liberties, and give to any commander in time of war the right to proclaim martial law, and substitute his own will for the Constitution and the established law of the land.

On the point of its being sanctioned by the laws of nations, I will read an extract from the able and lucid pamphlet of Judge Nicholas, to which I referred a moment ago. It disposes of that position of Mr. Adams in a more clear and lucid manner than I could do were I to make the effort:

"As to Mr. Adams's other authority, the law of nations, it is difficult to understand what bearing they can have upon a question of lawful power within this Union. They may define the rights of the conqueror and the duties of the conquered; but that is not what Mr. Adams means. He contemplates an unsuccessful or undetermined invasion merely, and says that 'an invaded country has all its laws and municipal institutions swept by the board, and martial law takes the place of them,' with an incidental power to both our own and the foreign commander to emancipate the slaves. Eminent as Mr. Adams is as an authority on the law of nations, yet his opinion must surely yield to that of the whole American people, as expressed to their Declaration of Independence. This very mode of annoyance towards an enemy by inciting a servile insurrection, is there denounced as contrary to the law of nations and the usages of civilized warfare. It is ranked in atrocity with that other infamous practice of the English Government, the allying itself with the scalping knife and tomahawk. According to the better opinion, then, any invading foreign commander, who should issue such a proclamation as the one indicated by Mr. Adams, would thereby cast himself and those under his command out of the pale of the protection of the usages of civilized warfare. Much rather, therefore, would any commander of ours be considered as absolving himself from the protection of all law, by such a course, and subjecting himself to be rightfully shot by any one who chose so to rid the country of so infamous an incendiary.

"The American people have heretofore lived under the fond delusion that they had the exclusive privilege of making constitutions and laws for themselves, and that the combined will of all the nations of the earth could not rightfully add to or alter these laws in the smallest particular, so far as they operate within our own territory. Nor do the laws of nations themselves make any pretension to the power asserted by Mr. Adams in their behalf. There is no principle of international law better settled, probably none other about which there is less difference of opinion, than that the laws of one nation cannot operate within the territory of another: and, by consequence, neither can the combined laws of two, three, or twenty nations, so operate within the territory of another nation.

"There is a class of politicians in this country who have long been suspected of having no great love or admiration of our republican institutions, viewing them as a useless experiment which must ultimately give way to monarchical government, and therefore as rather impatient for the advent of some bold, great man, sufficiently powerful to do away with the idle trumpery of a Constitution, and relieve us from the trouble of governing ourselves. I must confess it has been heretofore supposed that Mr. Adams did not belong

to this school of politicians. But it seems he goes a great way beyond them. They were merely suspected of sighing for a domestic usurper. He is for subjecting our Constitution and laws to the mercy of a foreign invader also, when he thinks it necessary, and to keep it up as long as he thinks it necessary; but for fear an American commander would never have the temerity or iniquity to attempt what he has in view, he claims that the power rightfully belongs to a foreign invader also, having in his eye, no doubt, an invader in particular, that never scrupled about means, however, infamous, in the attainment of ends however iniquitous.

"If a foreign invader can strike dead, in the hands of its owners, $400,000,000 worth of property by his mere proclamation, though he be defeated and driven from our territory the next day, it is by a most precarious tenure indeed that we hold all which Government was instituted to protect and guard. For Mr. Adams does by no means limit this power to a mere emancipation of slaves, but says it sweeps the whole Constitution by the board, and substitutes the invader's will in its place, He no doubt looks to that admired British government for the invading commander, who is, by proclamation, to emancipate the three millions of his black fellow-citizens. But he should remember that, though it be now the pleasure of that immaculate government to preach a crusade against negro slavery, she was formerly the patron, and even attempted to be the monopolizer, of the slave trade; that she even forced the slaves upon this country in despite the remonstrance of our fathers, as she is now attempting to force her opium upon the Chinese; that she may again change her views, drop her crusade against negro slavery, and preach a new crusade, as formerly, against the Protestant religion, or any other cherished right of New England. Does that also lie at the mercy of her proclamations? Can she thus put down that religion, and put up the Catholic or any other in its place?

"But, says Mr. Adams, this is not a mere theory—'his doctrine has been carried into practical execution.' He cites us to the example of those eminent man-slayers and expositors of the law of nations and of the usages of civilized warfare, Generals Morillo and Bolivar. He says they both did the thing in Colombia, though he does not explain how; after one had emancipated all the slaves, it was still left for the other to do. Neither has he done his argument all the justice he might in favor of the might of military power, from the example of the best of those two eminent expositors. He forgot to tell us that Bolivar, after having emancipated the blacks, by virtue of the same martial law enslaved the whites, and placed a crown on his own head. We of the South even, who are so much interested in the subject of slave property, would deem this a much more striking and convincing example of the extent of military power than that of the mere emancipation of slaves."

It is a principle in the American constitutions, not only in the Constitution of the United States, but it is, I believe, distinctly avowed and asserted in the constitution of every State of the Union, that the military shall be subordinate, and shall be kept in subjugation to the civil power, that the law shall be supreme. It is asserted distinctly in the constitution of Massachusetts. On that point I will read one more short extract from Judge Nicholas's pamphlet:

"How differently from his forefathers of Massachusetts does Mr. Adams consider the influence of foreign laws and the overshadowing supremacy of military power. They say in their constitution: 'The people of this Commonwealth are not controlable by any other laws than those to which their constitutional representative body have given their consent.' He says they are controllable by the arbitrary will of a military chief, foreign or domestic, and that even their constitution is in subordination to the law of war and the law of nations. Their Provincial Congress, writing to the Continental Congress, in May, 1775, on the necessity of their 'taking up civil government,' said: 'As the sword in all free States should be subservient to the civil powers, and as it is the duty of the magistrate to support it for the people's necessary defence, *we tremble at having an army, although consisting of our own countrymen, established here without a civil power to provide for and control them.*' This being in time of actual war, a war of revolution, too, what a silly set of old fashioned fellows that Provisional Congress must have been to be thus sighing for a civil government to control the army, they not knowing, in their simplicity, that it was the undoubted prerogative by the law of nations for the military to control the civil power in time of war. Fighting as they were for their lives and liberties, in the midst of an actual war of revolution, they trembled at the idea of an army of even their own countrymen, because there was no adequate civil power to control it. So little of this fear of military sway is there in Mr. Adams, that he contends the military rightfully does and should overmaster and control the civil authority in time of war from invasion or insurrection."

How differently did our fathers act. Martial law was never declared during the war of the Revolution, so far as I know. It was not declared during our war with Great Britain of 1812, save and except by General Jackson, in a single instance at New Orleans. The great and good Washington conducted the war of the Revolution without ever resorting to any such extraordinary power. Indeed, the temper of the times would have forbidden it. The stern patriots who were engaged in that struggle for civil liberty would not permit such a thing to be done; they would not have countenanced it for a single moment. When General Washington resigned his commission at Annapolis, on the 23d of December, 1783, Thomas Mifflin, President of the Continental Congress, addressed him thus:

"You have conducted the great military contest with wisdom and fortitude, invariably regarding the rights of the civil power through all disasters and changes."

That was the highest compliment which could be conferred on that illustrious chief; but in these times we have a president who allows his commanders-in-chief to declare martial law in the States; to issue edicts overthrowing the constitutional rights of the people, and prescribing the qualifications of electors. We find them levying forced contributions, not for military purposes, but in the way of charity, from the people of one of the States of the Union; and all this is borne. Sir, let me tell you that if the representatives of the American people submit to such acts, they surrender their Constitution, they surrender their liberties; and, indeed, in view of all these things, it seems to me that we are yielding and throwing away our liberties faster and more submissively than any free people ever before surrendered their dearest constitutional and civil rights. I will read to the Senate another extract from the speech of Mr. Webster on Jackson's protest. It so clearly points out the danger to free Governments from executive encroachments that he seemed to have looked with prophetic vision to these times:

"Mr. President, the *contest for ages has been to rescue liberty from the grasp of executive power.* Whoever has engaged in her sacred cause, from the days of the downfall of those great aristocracies which stood between king and people to the time of our own independence, has struggled for the accomplishment of that single object. On the long list of the champions of human freedom, there is not one name dimmed by the reproach of advocating the extension of executive authority. On the contrary, the uniform and steady purpose of all such champions has been to limit and restrain it. To this end, all that could be gained from the imprudence, snatched from the weakness, or wrung from the necessities of crowned heads, has been carefully gathered up, secured, and hoarded as the rich treasures, the very jewels of liberty. To this end, popular and representative right has kept up its warfare against prerogative with various success; sometimes writing the history of a whole age with blood, sometimes witnessing the martyrdom of Sydneys and Russels, often baffled and repulsed, but still gaining on the whole, and holding what it gained with a grasp that nothing but its own extinction could compel it to relinquish.

"Through all this history of the contest for liberty, executive power has been regarded as a lion that must be caged. So far from being the object of enlightened popular trust—so far from being considered the natural protection of popular right—it has been dreaded as the great object of danger.

"Who is he so ignorant of the history of liberty at home and abroad; who is he from whose bosom all infusion of American spirit has been so entirely evaporated as to put into the mouth of the President the doctrine that the defense of liberty naturally results to executive power, and is its peculiar duty? Who is he that is generous and confiding towards power where it is most dangerous, and jealous only of those who can restrain it? Who is he that, reversing the order of State, and upheaving the base, would poise the pyramid of the political system upon its apex? Who is he that declares to us, through the President's lips, that the security for freedom rests in executive authority? Who is he that belies the blood and libels the fame of his ancestry by declaring that they, with solemnity of form and force of manner, have invoked the executive power to come to the protection of liberty? Who is he that thus charges them with the insanity or recklessness of thus putting the lamb beneath the lion's paw? No, sir; no, sir. *Our security is in our watchfulness of executive power.* It was the constitution of this department which

was infinitely the most difficult part in the great work of creating our Government. To give the executive such power as should make it useful, and yet not dangerous; efficient, independent, strong, and yet prevent it from sweeping away everything by its military and civil power, by the influence of patronage and favor—this, indeed, was difficult. They who had the work to do saw this difficulty, and we see it If we would maintain our system, we shall act wisely by preserving every restraint, every guard the Constitution has provided. When we and those who come after have done all that we can do and all that they can do, it will be well for us and for them if the Executive, by the power of patronage and party, shall not prove an overmatch for all other branches of the Government.

"I will not acquiesce in the reversal of all just ideas of government. I will not degrade the character of popular representation. I will not blindly confide when all experience admonishes to be jealous. *I will not trust executive power, vested in a single magistrate, to keep the vigils of liberty.*

"Encroachment must be resisted at every step. Whether the consequences be prejudicial or not, if there be an illegal exercise of power, it must be resisted in the proper manner. We are not to wait till great mischief come, till the Government is overthrown, or liberty itself put in extreme jeopardy. We should not be worthy sons of our fathers were we so to regard questions affecting freedom."

The eloquent extract just read from Mr. Webster is so full of wisdom and truth, so applicable to the times, that I wish the great truths contained in it could be indelibly impressed upon the mind of every American citizen. The principles so eloquently and forcibly set forth by Mr. Webster are utterly at war with Mr. Adams's heresy on martial law.

This doctrine of martial law has not existed in England for two hundred years. I have examined every book on martial Law that I could find. Samuel's on Military Law (page 188) says:

"The military state receives its laws, as it has been observed, but in a rude and unpolished form, nevertheless with all their rough intrinsic value, in the first instance, from Parliament, through the medium of an annual statute—the mutiny act."

The British Parliament passes the mutiny act annually, and it passes the army appropriations annually. They guard the military more scrupulously than we do. Under our Constitution we can make our appropriations for two years. It was decided distinctly by Lord Loughborough, in a case to which I have alluded, in 2 Henry, Blackstone's Reports, that the doctrine has not existed in England since the petition of right. I have the petition of right here, but I shall not trouble the Senate by reading the clauses that prohibit martial law. In Grant's case, reported in 2 Henry Blackstone's Reports, Lord Loughborough said:

"The suggestion begins by stating the laws and statutes of the realm respecting the protection of personal liberty. It goes on to state that no person ought to be tried by a court-martial for any offense not cognizable by martial law, and so on. In the preliminary observations upon the case, my brother, Marshall, went at length into the history of those abuses of martial law which prevailed in ancient times. This leads me to an observation that martial law, such as it is described by Hale, and such also as it is marked by Mr. Justice Blackstone, does not exist in England at all. Where martial law is established and prevails in any country, it is of a totally different nature from that which is inaccurately called martial law, merely because the decision is by a court-martial, but which bears no affinity to that which was formerly attempted to be exercised in this kingdom, which was contrary to the constitution, and which has been for a century totally exploded."

All the martial law we have here, is that which necessarily arises under our articlss of war. It is a law of Congress, and Congress alone can make it. If you claim any martial law outside of that, you overthrow the Constitution of your fathers. It is settled in England that "martial law as it exists at present in this kingdom, forms a part of the law of the land. It is enacted by the same authority which is the origin of all the statutory regulation." (Tyler on Military Law, p. 105.) Scott on Military Law asserts the doctrine held by Tyler, and it is

declared from the highest authority that the power to declare martial law has been repudiated in England for two hundred years. Mr. Wharton says, in the definition I read some time since, that it is inconsistent with the petition of right. I ask the Senate if the clause in the petition of right, or in the bill of rights which prohibits martial law, is any more explicit or clear than our Constitution. Certainly the petition of right is not and the bill of rights is not more so; and yet you are willing to surrender the power to a Commander-in-Chief to overthrow the Constitution and all the laws of your country, to turn your Congress out of doors, to repudiate your judges, to overthrow the State constitutions, to supersede and overthrow all civil authority, to establish a religion, and compelling the people to worship in such a form as he may indicate. That is the doctrine as announced by the Senator from Massachusetts. I hope it never will be again promulgated by an American Senator, or harbored or entertained for a single moment by an American citizen. It shows a subserviency to the military and executive power that no man bred in the school of American liberty, and who properly appreciates constitutional freedom, should ever for a moment entertain. It is a doctrine that should be avowed only by despots and tyrants, and asserted and proclaimed only by those who are willing to be the slaves of tyrants.

Senators, if you maintain this Union at all, you must do it through the instrumentality of the Constitution. I have before said that the Union without the Constitution was worthless. The Union is only to be admired, only to be loved, because of the broad, the strong, the impenetrable shield that the Constitution throws around the rights and the liberties of the people. You may admire the country for its wide extent, its broad acres, its magnificent rivers, its noble seas, its gigantic mountains, but you can only love it because of its Constitution, for that secures to us all our rights; and while we defend it, while we protect it, while we maintain it against every usurper, whether he be high or low, as American Senators and the descendants of freemen should do, all will be well, but if we relinquish it, the saddest disasters will follow.

In 1851 Mr. Webster, the eminent statesman of Massachusetts, a man who was not driven off by a single idea, a man who studied the Constitution, who expounded the Constitution with an ability, with a force, with a power, with a cogency, and with a lucidness that perhaps was unequalled by any of our statesmen, said:

"If I have attempted to expound the Constitution, I have attempted to expound that which I have studied with diligence and veneration from my early manhood to the present day. If I have endeavored to defend and uphold the Union of the States, it is because my fixed judgment and my unalterable affections have impelled me, and still impel me, to regard that Union as the only security for general prosperity and national glory. Yes, gentlemen, the Constitution and the Union! I place them together. If they stand, they must stand together; and if they fall, they must fall together.

"There are some animals that live best in the fire, and there are some men who delight in heat, smoke, combustion, and even general conflagration. They do not follow the things which make for peace. They enjoy only controversy, contention, and strife. Have no communion with such persons, either as neighbors or politicians. You have no more right to say that slavery ought not to exist in Virginia, than a Virginian has to say that slavery ought to exist in New Hampshire. This is a question left to every State to decide for itself; and if we mean to keep the States together, we must leave to every State this power of deciding for itself."

These are the words of a wise man and a great man; and he justly warns you against the results of such a course as is indicated in that brief sentence. I tell you now, Senators, beware of these one-idea men, whether they are politicians or divines. Their teachings have done no good. Let us take warning from and follow the wise teachings of the great Webster, and the illustrious fathers who went before him. They have taught us that we should resist all

encroachments upon the Constitution at every hazard, and that the military power should be kept in strict subordination to the civil authority.

It is now proposed under the war power, as it is termed by some here, to overthrow every vestige of the Constitution, to place our rights and liberties in the hands of a single man, to make his will law. That is the doctrine expounded by the Senator from Massachusetts. We have already, in my humble judgment, suffered enough infractions of the Constitution to be committed without a just and manly rebuke of the usurpers, without now disposing of it by wholesale, by surrendering to one man the power to overthrow our system of government. What have we seen within the last year? The President of the United States has added thousands of men to your regular Army and to your Navy without warrant of law, usurping the powers of Congress, which alone has a right to raise armies and provide a navy; and money has been taken from the Treasury without warrant of law to bring the armies unlawfully raised into the field. The writ of *habeas corpus* has been suspended; citizens have been seized without charge and without warrant, although the Constitution says that they shall only be arrested on warrant and for probable cause. Men have been taken from their homes and hurried to distant forts. Hundreds of citizens of my own State, some of them men of the highest character and standing, have been confined for months in your northern bastile without charge, without warrant, who have begged all the time to be confronted with their accusers, who have asked to be tried by the courts, but the usurpers of your Constitution, said no. Your Secretary of State issued his order, and men who were his peers in every respect—Governor Morehead, Mr. Stanton, and other gentlemen whom I could name—were hurried to your forts and kept there without law, without warrant, and have since been released, not by virtue of law, but by the will of your Secretary. We have seen the officials of a large city in a neighboring State—the police commissioners of Baltimore—seized in a similar way by the military authorities. They presented their petition to the Senate, demanding that they be either released or handed over to the civil tribunals to be tried, protesting their innocence; and what was the result? Only two members of the Judiciary Committee were in favor of reporting anything for their relief. I reported a preamble and resolution declaring that they should be immediately released, or handed over to the civil authorities for trial; it went on your calendar last summer, and has remained there ever since; and some ten or twelve votes were the most I could ever get to take it up for consideration.

What else has been done? The Constitution guaranties liberty of speech and freedom of the press. The freedom of the press, which I had been taught to believe was the palladum of our liberties, and formidable only to tyrants, has been overthrown; papers advocating certain views have been denied circulation through the mails. All this has been done under the plea of necessity, which has been the tyrant's plea the world over. We find here that the chosen men of the people and the States, who are placed on the watch-tower of liberty as defenders of the Constitution, have so far failed to speak, as they should, in trumpet tones against those who thus overthrow the Constitution and the liberty of the people. Would our fathers have thus acted? No, sir, no; they, as became the representatives of a great and free people, would have spoken boldly and fearlessly in their places; they would have passed their resolves in condemnation of this abridgment of the rights of the people and this overthrow of constitutional liberty. We, however, do not. I made one effort, but it passed unheeded. If God spares me, I will try once more to get up the resolution to which I allude. For slighter violations of the constitution of Great Britain our English ancestor brought the head of one king to the block, and sent another a wanderer and an exile from his throne and his kingdom.

A wise man of Greece once said, that was the best Government where a

wrong done to the poorest citizen was an insult to the whole State. Here, in this once free, happy, and prosperous country, we appreciated the maxim of the Grecian sage; but now we see, with apparent indifference, many of our most distinguished citizens seized without warrant, without charge against them, torn from their homes and families, hurried to distant prisons, and there kept for months in close confinement, all the time protesting their innocence, and demanding a trial in accordance to the Constitution and laws of the country, which was refused them. Some have been released, not by the law, but by the will of the usurpers who imprisoned them; others still languish in the prisons, and Congress has not dared to rebuke those who have thus denied to citizens their constitutional rights.

The right of the people to keep and bear arms is secured by the Constitution. The right to be free from unreasonable seizures and searches is declared. These rights have been disregarded. Indeed, almost every one of the great privileges which the Constitution declares belong to the citizen has been overthrown. Not content with that, the astounding heresy is now avowed that you must give up the entire Constitution and laws of the United States and all the institutions of the States to the will of the President and to his commanders, under this assumed power to declare martial law. In the name of the liberties of a great people, in the name of the venerated Constitution of my country, I, for one, protest against all these things.

I know, Senators, that my loyalty to the Constitution of my country has caused me to be suspected of disloyalty to the Union of our fathers; but I care not what suspicions may be entertained, I, for one, while I am here, will speak what I believe; I will utter language becoming a Senator representing a brave and a free people. I will fearlessly utter my sentiments and denounce all who endeavor to overthrow the Constitution of my country, which they and I are bound by oath to support, and I will let consequences take care of themselves. I know that in these times, perhaps it may be said that the very speech I have made to-day is an evidence of treason. Sir, if loyalty to the Constitution of my country be treason, then am I a traitor. I have been loyal to that Constitution as I understand it, and I understand it only as our wisest and most illustrious fathers interpreted it. I shall continue in my place to denounce every encroachment on the Constitution of my country, I trust always in a becoming manner, and in such a way as not to exhibit any harsh or acrimonious feelings towards Senators who differ from me; but I mean in a manly, calm way to denounce every encroachment on the Constitution of my country and the liberties of the people, let the consequences be what they may. If I did less I should not discharge my conscientious duty. I intend, above all things, to be on good terms with myself; I will do nothing but what I think is right. Doing that, I am willing to submit my action to the judgment of my countrymen. In the present distempered state of the public mind I will, I have no doubt, receive the harsh censure of some; but in after time I expect my action to be approved by those who love constitutional liberty.

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